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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AS/LSC/2011/0702

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Applicant:	Arora Estates Ltd
Respondents:	(1) Kay Joan Suzanne Smith (2) David St John Ryding & Ilona Ryding
Property:	6 & 6A Reservoir Road, Ruislip, Middlesex, HA4 7TU
Date of Hearing	16 February 2012

Appearances

Applicant

Mr A Arora	Solicitor
Mr S Bhogal)	Synergy Homes, Managing Agents
Mrs S Menon)	

Respondents

Mr R Brown	Counsel
Ms K Smith	First Respondent and Leaseholder
Mr N Ransley	Surveyor and Expert Witness

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)
Mr D I Jagger MRICS
Mrs L West JP MBA

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondents' liability to pay and/or the reasonableness of the estimated cost of proposed major works to the external of the property known as 6 & 6A Reservoir Road, Ruislip, Middlesex, HA4 7TU ("the property"). The costs are claimed in respect of the 2011 service charge year.

2. The property is described as a semi-detached two-storey house that has been converted into 2 flats. The Respondents are the present leaseholders of the ground and first floor flats respectively. The leases in relation to both flats were granted on identical terms for a term of 99 years from 25 December 1994. The leases in respect of the ground and first floor flats are dated 3 July 1996 and 29 September 1995 respectively.

3. The factual background of this matter is largely uncontentious. The Applicant acquired the freehold on 22 June 2010. Subsequently, it instructed a firm of surveyors, Michael Richards & Co, to carry out an inspection of the property, which they did on 21 February 2011. On instruction, they also prepared a specification to carry out external repairs, redecorations and miscellaneous works and obtained estimates for the proposed works.

4. On 19 April 2011, the Applicant commenced statutory consultation pursuant to section 20 of the Act by serving the Respondents with a Notice of Intention. No response was received from either of them. On 8 July 2011, the Applicant served the Respondents with a Notice of Estimates setting out the 3 estimates it had obtained for the proposed works. Again, no response was obtained from the Respondents. Subsequently, on 11 August 2011, the Applicant wrote to the Respondents informing them that it proposed to instruct the contractor, A R Bourne, as it had provided the lowest estimate in the sum of £8,278.80. It also demanded that each of the Respondents pay a service charge contribution of £4,139.40 representing their contractual liability of 50% of the cost.

5. On 24 August 2011, the First Respondent wrote to the Applicant contending that the proposed works were either unnecessary and/or overpriced. By a letter dated 30 August 2011, the Applicant sought to identify her particular concerns, but received no reply. Therefore, by an application dated 7 October 2011, the Applicant applied to the Tribunal seeking a determination that:

(a) the proposed works fell within the landlord's repairing obligations under the terms of the leases.
(b) that statutory consultation under section 20 of the Act had been validly carried out.
(c) that the proposed works are reasonably incurred and the estimated cost reasonable in amount.

The Law

6. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
> *(a) the person by whom it is payable,*
> *(b) the person to whom it is payable,*
> *(c) the amount which is payable,*
> *(d) the date at or by which it is payable, and*
> *(e) the manner in which it is payable.*
> *(2) Subsection (1) applies whether or not any payment has been made."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Decision

7. The hearing in this matter took place on 16 February 2012. The Applicant was represented by Mr Arora who is a Solicitor and a Director of the company. The First Respondent was represented by Mr Brown of Counsel. The Second

Respondents did not appear and were not represented. Indeed, they had not participated in these proceedings at all.

8. After negotiations at the start of the hearing, the Applicant and the First Respondent reached agreement. It was a term of the agreement that the First Respondent would not disclose the terms of settlement to the Second Respondents. Mr Brown and the First Respondent recused themselves from the hearing. However, despite their absence, it was incumbent for the Applicant to strictly prove its case against the Second Respondents and the Tribunal heard evidence in this regard.

9. Mr Arora said that clause 5(3) of the leases set out the landlord's repairing obligation to keep the main structure of the property in repair. The contractual liability on the part of the tenant to pay a service charge contribution in relation to such expenditure is to be found in clause 3(6). Mr Arora submitted that the repairing obligation could only apply to the external parts of the property including doors, door frames and window frames as these areas did not fall within the tenant's repairing obligation in clause 3(3) of the leases.

10. Having carefully considered the terms of the leases, the Tribunal accepted Mr Arora's analysis to be correct and found that the Respondents are contractually liable to pay a service charge contribution for the proposed external works and that the said works fell within the landlord's repairing obligation under clause 5(3).

11. As to the scope and necessity for the proposed works, Mr Arora argued that the Applicant was entitled to rely on the specification prepared by Michael Richards & Co and submitted that they are reasonably incurred.

12. The Tribunal found that only part of the proposed works had been reasonably incurred. The inspection report prepared by Michael Richards & Co only expressly identifies repairs needed to the external rendering, chimney stack and external redecorations. The report is silent in relation to anything else. The Tribunal found the report to be sparse and unhelpful and not of a standard

to be expected from a firm of professional Chartered Surveyors. The justification for the works can only be based on the conclusions of the Applicant's expert report. Usually, the specification prepared is derived or based on the conclusions reached in any such report. In the present case, the specification bears no such relationship to the conclusions reached in the report of Michael Richards & Co. The specification here is no more than a generic specification, which included items of work much greater in scope than those recommended in the Michael Richards report. Accordingly, the Tribunal found that only the scaffolding, external redecorations and repointing of the chimney stack to be reasonably incurred. For the avoidance of doubt, the Tribunal did not find the cost of preliminaries in the sum of £100 and a contingency sum of £1,000 to be reasonably incurred on the basis that these costs are unnecessary in the present case for such a small contract.

13. It follows, therefore, that the Tribunal went on to find that the estimated cost of the proposed works based on the original specification was unreasonable. Of the proposed works that the Tribunal found to be reasonably incurred, it allowed an estimated cost of £5,388 to be reasonable in amount. The Tribunal allowed the professional fees as claimed.

14. The administration charges of £500 were not raised by the Applicant as an issue and the Tribunal made no determination in relation to this matter.

15. As to the issue of the statutory consultation carried out by the Applicant under section 20 of the Act, the Tribunal found this to be validly undertaken. However, this was limited to the scope and estimated cost of the originally specified works. In the light of the Tribunal's findings above, it may be prudent for the Applicant to re-consult on an amended specification and estimated cost.

Section 20C & Fees

16. The issue of the Applicant's costs in these proceedings was agreed between it and the First Respondent as part of their compromise. The Second

Respondents had not made an application under section 20C and, therefore, it was not necessary for the Tribunal to consider making any such order.

17. As to the fees of £350 paid by the Applicant to have this application issued and heard, the Tribunal concluded that it was just and equitable to make an order that the Second Respondents reimburse these fees. From the papers, it was clear to the Tribunal that the Applicant had made real attempts to engage and consult with the tenants without any response. Therefore, in seeking certainty about the proposed works, it was justified in bringing this application.

Dated the 17 day of April 2012

CHAIRMAN.....

Mr I Mohabir LLB (Hons)